

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 13, 2025**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

INDUSTRIAL WELDING  
COMPANY, INC, a Washington  
profit corporation; S & R JORDAN,  
LLC, a Washington limited liability  
company; and STACEY and RONDA  
JORDAN, husband and wife,

Plaintiffs,

v.

STATE OF WASHINGTON;  
WASHINGTON STATE  
DEPARTMENT OF  
TRANSPORTATION; ROGER  
MILLAR, in both his individual  
capacity and official capacity as the  
Transportation Secretary of the  
Washington State Department of  
Transportation,

Defendants.

NO. 2:23-CV-0174-TOR

ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment  
(ECF No. 32). The Court has reviewed the record and files herein, and is fully

ORDER GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY  
JUGDMENT ~ 1

1 informed, finding oral argument unnecessary. For the reasons discussed below,  
2 Defendants' Motion for Summary Judgment (ECF No. 32) is GRANTED in part.

### 3 BACKGROUND

4 This matter arises out of condemnation proceedings of Plaintiffs' property.  
5 The property, Industrial Welding Company, Inc. ("IW"), and related land parcel is  
6 located at 1203 N. Greene Street in Spokane, Washington. ECF No. 36 at 14, ¶ 31.  
7 The business has been in the Jordan family since the 1970s, and deals in  
8 specialized welding and fabrication. *Id.*, ¶¶ 30, 31. The business also leased and  
9 utilized a triangle shaped property across the street. *Id.* at 15, ¶ 34. In 1999, Mr.  
10 Jordan's father was first approached by the Washington State Department of  
11 Transportation ("WSDOT"), alerting him that the property was potentially in the  
12 path of the North Spokane Corridor ("NSC") project, and therefore may be subject  
13 to condemnation. *Id.*, ¶ 34.

14 The NSC project was funded by the legislature in 2015, and that same year  
15 WSDOT representatives visited IW to inform Plaintiffs that the property would be  
16 taken "in one to three years." ECF No. 33 at 2, ¶ 8. Plaintiffs also maintain that  
17 the representatives informed them that WSDOT would provide assistance in  
18 relocating the business. ECF No. 36 at 16, ¶ 36. However, despite its promise to  
19 do so, Plaintiffs allege that WSDOT was not helpful in their search for a new  
20 location, as no funds were available for that purpose yet. *Id.*, ¶ 37. Plaintiffs

1 retained an attorney, Tim Stiles, to facilitate communication with WSDOT moving  
2 forward. ECF No. 33 at 7, ¶ 9.

3 On June 7, 2016, Mr. Stiles sent a letter to WSDOT explaining that he would  
4 be representing Plaintiffs as the NSC project developed. *Id.*, ¶ 10. WSDOT  
5 responded the same day, explaining that a revision plan for the area would not be  
6 completed for several months. *Id.*, ¶ 11. In November 2016, Mr. Stiles reached  
7 out to WSDOT to request an update on the projection of the NSC project, and  
8 WSDOT responded stating that IW's property was no longer needed. ECF No. 36  
9 at 17, ¶ 39. Parties dispute whether this determination by WSDOT was actually  
10 made in June 2016. ECF No. 36 at 17, ¶ 40; ECF No. 42 at 9, ¶ 14. Mr. Stiles  
11 reiterated to WSDOT that taking other properties in the area would have a negative  
12 impact on IW given the operation of the business, but WSDOT informed him that  
13 until the final design was complete, it could not address many of IW's concerns.  
14 ECF No. 33 at 4, ¶ 15.

15 In 2017, Mr. Jordan contacted WSDOT regarding the distance between the  
16 business and the freeway. *Id.*, ¶ 16. In response, Bob Hilmes, the project engineer,  
17 reiterated that the plan was still being finalized and construction was not set to  
18 begin until 2022, subject to funds from the legislature. *Id.*, ¶ 17. Plaintiffs  
19 maintain that at this point, WSDOT communicated that the IW property would not  
20 be needed, but the leased triangle property across the street would be taken. ECF

1 No. 36 at 17, ¶ 41. In June 2017, Mr. Hilmes scheduled a visit to the IW property  
2 to gain an understanding of how the business functioned as the plan continued to  
3 take shape. ECF No. 33 at 4, ¶ 18.

4 In early 2018, plans for the NSC were still being finalized. ECF No. 33 at 4,  
5 ¶ 19. During this time, Mr. Stiles reiterated to WSDOT IW's preference that the  
6 entire property be taken as operating its business with limitations would not be  
7 feasible. *Id.*, ¶ 20. In June of 2018, WSDOT informed Plaintiffs that it planned to  
8 purchase the IW property. ECF No. 36 at 18, ¶ 43. And in December 2018,  
9 WSDOT began drilling and site testing, causing disruption to Plaintiffs' business.  
10 *Id.* at 19, ¶ 44. In October 2019, WSDOT informed Mr. Stiles that it needed  
11 occupancy surveys. ECF No. 33 at 4, ¶ 21. That same month, WSDOT and Mr.  
12 Stiles met, and WSDOT offered \$387,800 for 62,500 square feet of the IW  
13 property. ECF No. 36 at 19, ¶ 45. The offer was supported by appraisals. ECF  
14 No. 33 at 5, ¶ 22. Plaintiffs did not respond until August of 2020, and rejected the  
15 offer without making a counteroffer. *Id.*, ¶¶ 24, 25. Defendants also assert that  
16 Plaintiffs retained their own appraiser and viewed his valuation as too low.

17 On February 2, 2021, the State then filed a motion adjudicating public use  
18 and necessity relying on the existing plans for the project. ECF No. 33 at 5, ¶ 26;  
19 ECF No. 36 at 22, ¶ 55. During this process, Plaintiffs stipulated to a finding of  
20 public use and necessity. ECF No. 33 at 5, ¶ 27. In the interim, WSDOT received

1 the results of a traffic study which indicated that an alternative design was  
2 effective, and thus it no longer needed to take IW's property. *Id.* at 5–6, ¶¶ 28, 29.  
3 Plaintiffs assert that it was known by WSDOT for certain that the parcel was not  
4 needed by January 2021 at the latest, before the finalization of the traffic study.  
5 ECF No. 33 at 21, ¶¶ 52–54. In voluntarily dismissing the condemnation  
6 proceedings, WSDOT paid Plaintiffs costs, over \$190,000, plus attorneys' fees for  
7 the abandoned condemnation. ECF No. 33 at 6, ¶ 29. There is still \$63,217.75  
8 outstanding from the fees and costs Plaintiffs originally sought. ECF No. 36 at 14,  
9 ¶ 29.

10 Plaintiffs brought claims in Spokane County Superior Court for violation of  
11 42 U.S.C. §1983 against Washington State Department of Transportation Secretary  
12 Roger Millar in his individual and official capacity, civil malicious prosecution  
13 against all Defendants, tortious interference with business expectancy against all  
14 Defendants, abuse of process against all Defendants, negligence against all  
15 Defendants, and outrage against all Defendants.<sup>1</sup> ECF No. 1-3 at 12–19.  
16 Defendants removed this action on June 20, 2023. ECF No. 1. They now move  
17 for summary judgment on all Plaintiffs' claims. ECF No. 32.

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19 <sup>1</sup> The Court previously dismissed John Doe Defendants 1-10 on March 14, 2024.  
20 ECF No. 25.

**DISCUSSION**

The Court may grant summary judgment in favor of a moving party who demonstrates “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling on a motion for summary judgment, the court must only consider admissible evidence. *Orr v. Bank of America*, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002). The party moving for summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to identify specific facts showing there is a genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

For purposes of summary judgment, a fact is “material” if it might affect the outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is “genuine” only where the evidence is such that a reasonable jury could find in favor of the non-moving party. *Id.* The Court views the facts, and all rational inferences therefrom, in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted “against a party who fails to make a showing sufficient to establish the existence of

1 an element essential to that party's case, and on which that party will bear the  
2 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

3 **I. 42 U.S.C. § 1983**

4 To establish liability under 42 U.S.C. § 1983, a claimant must prove (1) a  
5 person acting under color of state law (2) committed an act that deprived the  
6 claimant of some right, privilege, or immunity protected by the Constitution or  
7 laws of the United States. *Leer v. Murphy*, 844 F.2d 628, 632–33 (9th Cir. 1988).  
8 Here Plaintiffs assert that their Fourteenth Amendment due process rights were  
9 infringed upon as Defendants denied them their property by engaging in arbitrary  
10 and capricious condemnation conduct. ECF No. 1-3 at 13. Defendants argue that  
11 summary judgment is proper because Plaintiffs can neither show that Secretary  
12 Millar was personally involved nor that they were denied any constitutionally  
13 protected right. ECF No. 32 at 8–9.

14 The Fourteenth Amendment provides in relevant part, “nor shall any State  
15 deprive person of life, liberty, or property, without due process of law; nor deny to  
16 any person within its jurisdiction the equal protection of the laws.” U.S. Const.  
17 amend. XIV. “The substantive component of the Due Process Clause forbids the  
18 government from depriving a person of life, liberty, or property in such a way that  
19 ... interferes with rights implicit in the concept of ordered liberty.” *Engquist v.*  
20 *Oregon Dep't of Agric.*, 478 F.3d 985, 996 (9th Cir. 2007) (internal quotations and

1 citation omitted). To establish a substantive due process clause violation, a  
2 plaintiff must also allege a “level of executive abuse of power as that which shocks  
3 the conscience.” *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir.2006) (internal  
4 citation omitted). The government action must be “clearly arbitrary and  
5 unreasonable, having no substantial relation to the public health, safety, morals or  
6 general welfare.” *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir.  
7 1994) (internal citation omitted).

8 Defendants argue that Secretary Millar cannot be held responsible under  
9 § 1983 because he was neither personally involved nor did he have the required  
10 knowledge and acquiescence of the use of Plaintiffs’ property for the NSC. ECF  
11 No. 32 at 10. A supervisor may only be liable for constitutional violations if he or  
12 she was personally involved in the deprivation, or a sufficient causal connection  
13 exists “between the supervisor's wrongful conduct and the constitutional  
14 violation.” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011). “The requisite  
15 causal connection can be established by setting in motion a series of acts by others,  
16 or by knowingly refusing to terminate a series of acts by others, which the  
17 supervisor knew or reasonably should have known would cause others to inflict a  
18 constitutional injury.” *Id.* at 1207–08 (internal citations omitted). Supervisors are  
19 not liable merely for being present at the scene of a constitutional violation or for  
20 being a member of the same operational unit as the wrongdoer. *Id.* at 936–37.



1 Instead, a plaintiff must show that the supervisor ratified the unconstitutional  
2 conduct of subordinates; failed to train, supervise, or control their subordinates; or  
3 adopted a policy that shows “a reckless or callous indifference to the rights of  
4 others.” *Id.* at 1205-06 (quoting *Watkins v. City of Oakland*, 145 F.3d 1087, 1093  
5 (9th Cir. 1998)).

6 Plaintiffs argue that, while Secretary Millar was not personally involved, he  
7 authorized, set in motion, or acquiesced to the condemnation given his job  
8 description as laid out in RCW 47.01.260(3) which allows the Department of  
9 Transportation to “acquire property as provided by law . . . necessary or convenient  
10 for the planning, design, construction . . . and administration of state highway  
11 systems” and RCW 47.01.101 which instills in the Secretary of Transportation  
12 such abilities as to “direct and coordinate the programs of the various divisions of  
13 the department,” “adopt department rules,” and, “execute and implement the  
14 biennial operating budget.” Secretary Millar’s power is supported in this case,  
15 Plaintiffs argue, by the Condemnation Petition, issued on December 17, 2020,  
16 stating that “[t]he Secretary of Transportation, as authorized by RCW 47.28.010 . .  
17 . has surveyed, located, selected, and adopted part of [Plaintiff’s property] for State  
18 Route 395 . . . [t]he property and the property rights that the state seeks to acquire .  
19 . . are necessary for the construction, maintenance, and operation of a state  
20 highway, which is a public use.” ECF No. 40 at 28. Finally, Plaintiffs argue that

1 WSDOT agreed that Secretary Millar was the “ultimate decision maker,” with  
2 respect to the Department. ECF No. 37 at 22. Defendants argue that Plaintiffs  
3 have produced no evidence that Secretary Millar approved of or acquiesced to any  
4 alleged violations of their constitutional rights. ECF No. 32 at 10.

5 Based on the content of the provided depositions, and in taking the facts in  
6 the light most favorable to Plaintiffs, the Court does not find Secretary Millar  
7 liable for a substantive due process violation in his supervisory role. As both  
8 parties point out, the NSC Project has been percolating since at least 1999, and  
9 while there is no information on the record as to when Secretary Millar was  
10 installed, the Court is confident it was after that point. In the nearly three decades  
11 since they first learned of the condemnation, Plaintiffs do not point to a “‘policy or  
12 custom’ ... [that] played a part in the violation of federal law,” which WSDOT or  
13 Secretary Millar imposed or enforced. *McRorie v. Shimoda*, 795 F.2d 780, 783  
14 (9th Cir. 1986). Instead, Plaintiffs claim that Secretary Millar “set into motion” or  
15 otherwise declined to intervene in, the acquisition of their property. ECF No. 35 at  
16 10. However, this connection seems tenuous, especially given that Plaintiffs offer  
17 no evidence that Secretary Millar knew WSDOT employees were potentially  
18 violating the constitutional rights of others in the course of their work and turning a  
19 blind eye. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991).  
20 Secretary Millar attested that he had no knowledge of the specific factual contents

1 of the claims alleged in his personal or official capacity. ECF No. 34-2 at 15, ¶ 8.

2 And while true that the Federal Rule of Civil Procedure 30(b)(6) witness for  
3 WSDOT described Secretary Millar as effectively in charge of the Department, his  
4 duties were not unequivocal:

5 Q. Mr. Millar, as the secretary of transportation, is ultimately  
6 responsible and supervisor of all you people, correct?

7 A. That's correct.

8 Q. All final decisions ultimately flow through the secretary, Mr. Millar?

9 A. He's the secretary of transportation, but to use the term supervisor  
10 of all of us, I think would be a little bit inaccurate.

11 ECF No. 37 at 22.

12 To underscore this point, and consistent with RCW 47.01.101(3),  
13 information on the record suggests that Mr. Hilmes in his capacity as project  
14 engineer was the managing force behind the decisions and had discretion to  
15 determine what was necessary for the project, with additional input from other  
16 individuals. ECF No. 43-3 at 44; ECF No. 37 at 56, 69, 78, 85, 86, 87, 88. But  
17 detrimentally to Plaintiffs' claim, no evidence in the record suggests that Secretary  
18 Millar was involved beyond his figure head role as the Secretary of Transportation,  
19 which is untenable under 42 U.S.C. § 1983. *Felarca v. Birgeneau*, 891 F.3d 809,  
20 820 (9th Cir. 2018) (internal citation and quotation omitted) ("Without that crucial  
connection, plaintiffs' argument is nothing more than an attempt to hold the UC

1 administrators liable solely by virtue of their office. That argument fails because  
2 there is no respondeat superior liability under section 1983.”). Plaintiffs fail to put  
3 forth any information that Secretary Millar knew or should have known of  
4 constitutional violations being committed by his staff, and either actively  
5 encouraged the conduct or willfully chose to leave it uncorrected. Therefore, while  
6 questions of fact likely still remain on the substance of Plaintiffs’ claim, summary  
7 judgment is proper because Secretary Millar is an improper defendant.

## 8 **II. Remaining State Law Claims**

9 Having dismissed the federal claim, the Court declines to exercise  
10 jurisdiction over Plaintiff’s state law claims of malicious prosecution, tortious  
11 interference with business expectancy, abuse of process, negligence, and outrage.  
12 This matter was removed on the basis of this Court’s federal and supplemental  
13 jurisdiction, pursuant to 28 U.S.C. §1441(c) as containing both federal and state  
14 law causes of action. ECF Nos. 1-3 at 12–19 and 1-9. A federal court has  
15 supplemental jurisdiction over pendent state law claims to the extent they are “so  
16 related to claims in the action within [the court’s] original jurisdiction that they  
17 form part of the same case or controversy.” 28 U.S.C. § 1367(a). “A state law  
18 claim is part of the same case or controversy when it shares a ‘common nucleus of  
19 operative fact’ with the federal claims and the state and federal claims would  
20 normally be tried together.” *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir.

1 2004) (internal citation omitted).

2       Once the court acquires supplemental jurisdiction over state law claims, the  
3 court may decline to exercise jurisdiction under several circumstances, including  
4 where “the district court has dismissed all claims over which it has original  
5 jurisdiction.” 28 U.S.C. § 1367(c)(3). A court may also decline to exercise  
6 jurisdiction where the claim raises a novel or complex issue of state law, the claim  
7 substantially predominates over the claim or claims over which the district court  
8 has original jurisdiction, or in exceptional circumstances, there are other  
9 compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c). “[I]n the usual  
10 case in which all federal-law claims are eliminated before trial, the balance of  
11 factors . . . will point toward declining to exercise jurisdiction over the remaining  
12 state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988),  
13 *superseded on other grounds by statute as stated in Sanford v. MemberWorks, Inc.*,  
14 625 F.3d 550, 561 (9th Cir. 2010). “[D]istrict courts may decline to exercise  
15 jurisdiction over supplemental state law claims in the interest of judicial economy,  
16 convenience, fairness and comity.” *Smith v. Lenches*, 263 F.3d 972, 977 (9th Cir.  
17 2001) (citing *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 172-73  
18 (1997)). This declination of jurisdiction may be raised by the parties or *sua sponte*  
19 by the Court. *See Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 n.3 (9th Cir.  
20 1997) (en banc).

1 Here, not only has the Court dismissed the only claim over which it had  
2 original jurisdiction, but state law claims abound this case, making up the factual  
3 background of most of the suit. As such, for the purposes of comity and fairness,  
4 the Court finds the remaining issues better addressed by the Spokane County  
5 Superior Court. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726–27  
6 (1966) (“[I]f the federal claims are dismissed before trial, even though not  
7 insubstantial in a jurisdictional sense, the state claims should be dismissed as well.  
8 Similarly, if it appears that the state issues substantially predominate, whether in  
9 terms of proof, of the scope of the issues raised, or of the comprehensiveness of the  
10 remedy sought, the state claims may be dismissed without prejudice and left for  
11 resolution to state tribunals.”).

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

13 1. Defendants’ Motion for Summary Judgment (ECF No. 32) is

14 **GRANTED in part.**

15 2. Judgment shall be entered in favor of Defendant Millar on the 42 U.S.C.

16 § 1983 claim for violation of the Fourteenth Amendment’s substantive  
17 due process clause.

18 3. Pursuant to 28 U.S.C. § 1367(c), Plaintiffs remaining state law claims of  
19 malicious prosecution, tortious interference with business expectancy,  
20 abuse of process, negligence, and outrage are **REMANDED** to the

Spokane County Superior Court, State of Washington, for all further  
proceedings (former Spokane County Case No. 23-2-02010-32).

The District Court Executive is directed to enter this Order, furnish copies to  
counsel, and mail a certified copy to the Clerk of the Spokane County Superior  
Court. The deadlines, hearings and trial date are **VACATED**, and the file is  
**CLOSED**.

DATED March 13, 2025.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge